

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA

4 v.

17 CR 47

5 MAHMOUD THIAM,

Bail Application

6 Defendant.

7 -----x
8 New York, N.Y.
9 January 30, 2017
2:35 p.m.

10 Before:

11 HON. VICTOR MARRERO

12 District Judge

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17 APPEARANCES

18 PREET BHARARA

19 United States Attorney for the
20 Southern District of New York

ELISHA KOBRE

21 Assistant United States Attorney

22 PAUL E. SUMMIT

23 ANDREW T. SOLOMON

CAITLIN FAHEY

24 Attorneys for Defendant
25

1 (Case called)

2 THE COURT: Good afternoon. This is a proceeding in
3 the matter of the United States v. Thiam, docket number 17 Cr.
4 0047. Counsel please enter your appearances for the report.

5 MR. KOBRE: Elisha Kobre for the government. With me
6 at counsel table FBI Special Agents Patrick Kaleen and
7 Stephanie Kruge, and Alexander Baer, who is a paralegal
8 specialist with our office.

9 MR. SUMMIT: Paul Summit of Sullivan & Wooster, your
10 Honor. Counsel with me are Andrew Solomon and Caitlin Faehy of
11 Sullivan & Worcester, and of course the defendant, my client,
12 Mahmoud Thiam.

13 THE COURT: The Court scheduled this proceeding
14 following the application from the defendant for pretrial
15 release. The Court is sitting on this matter in its capacity
16 as Part I given the absence of the judge to whom this case was
17 assigned, Judge Cote.

18 Mr. Summit, do you wish to address the application, or
19 one of your team members?

20 MR. SUMMIT: I do, your Honor. I'm very glad to be in
21 this courtroom today. I think this case calls out for judicial
22 intervention.

23 Let's begin with a contrast with the case you just
24 heard. This is not a presumption case. This is a case where
25 the government bears the burden and has so far woefully fallen

1 down in meeting that burden. As I will demonstrate, I think,
2 as we go through the evidence that they have proffered in the
3 brief that they filed on Friday, once again they have not come
4 close to their burden in this case.

5 On the day of arrest, which was December 13th, Mr.
6 Thiam was interviewed by pretrial services and there was a
7 brief hearing before Magistrate Judge Francis in which the
8 government made a number of erroneous and very prejudicial
9 statements that led Magistrate Judge Francis to pretrial detain
10 Mr. Thiam. Mr. Thiam is a U.S. citizen with absolutely no
11 criminal record at all.

12 You now have a brief from the government that is
13 riddled with factual error. I will point out those factual
14 errors once again. I want to introduce Mr. Thiam briefly to
15 give your Honor some context.

6 Your Honor, may I have a moment to read this document?

7 THE COURT: Sure.

18 MR. SUMMIT: Thank you so much. Your Honor, I think
19 you and we are looking at the same document, which is a new
20 pretrial services report, recommending pretrial relief.

21 MR. KOBRE: Your Honor, I'm sorry. I haven't received
22 a copy of that document. Actually, I have, your Honor. I
23 apologize.

24 MR. SUMMIT: I will return to that document shortly,
25 your Honor.

1 Let me take a moment to introduce Mr. Thiam and his
2 background. As we set forth in the brief, he had an extremely
3 chaotic, traumatic childhood. He was born in Guinea. His
4 father was murdered by the then Guinean government, a dictator
5 named Toure. He fled with his uncle to Ethiopia. There was an
6 attempted kidnapping by the Toure government in Ethiopia, and
7 that began a peripatetic childhood in which he traveled without
8 passport on this UN laissez-passer release or something like
9 that, a method of traveling that the UN provides for stateless
10 refugees.

11 He traveled to several African countries, brief
12 periods of time in Togo, a year in France of study, and finally
13 to the United States in 1987, when he was 20 years old. This
14 has been his only home since then, since he was 20, in 1987.
15 He started in Washington, D.C., learning English, studying at a
16 community college. He went to Cornell, class of '91, and he
17 graduated.

18 He has lived since then in New York City. In 1994 he
19 began working for Merrill Lynch as a banker. He married Fatim,
20 and they have had three children, all born in the United
21 States, all U.S. citizens. The only home that he and the
22 children and Fatim have known since then is New York City.

23 As I say, in 1994 he began a banking career at Merrill
24 Lynch and eventually at UBS. Later I will go over the
25 highlights of a declaration of Brian Henderson, a very

1 distinguished banker and now citizen in the public interest you
2 might say. Among other things, he has served on an extremely
3 important First Department disciplinary committee and review
4 committee. He filed a declaration attesting to Mr. Thiam's
5 character and the fact that in Mr. Henderson's view -- and he
6 has known Mr. Thiam ever since the mid '90s -- there is
7 absolutely no indication that he would flee these charges.

8 In 1994 he began working for Merrill Lynch. He then
9 went to UBS. In 2002 he became a naturalized U.S. citizen. So
10 did Fatim, his wife. In late 2008 a new government came to
11 power in Guinea. Mr. Thiam had had some relationships with
12 people in Guinea through his banking work in New York City. He
13 specialized in mining and developed relationships in any number
14 of African countries, including Guinea.

5 He was invited to become a minister, the minister of
6 mines of Guinea, and he did so. He was there from 2009 to
7 2010. That is the only period of time since he came to this
8 country that he has lived elsewhere.

19 I'm not going to repeat everything in our brief
20 because that would be tedious for the Court and unnecessary.
21 One of the things we did in the brief was set forth the fact
22 that since he came back in very late 2010 or early 2011, there
23 have been numerous signs that governments, several governments,
24 were investigating Mahmoud Thiam, numerous signs -- we listed
25 them all at pages 4 to 5 of our brief -- every time Mahmoud

1 Thiam would travel for business.

2 And he traveled extensively after returning to New
3 York City in 2011. He did travel extensively internationally
4 for his business. That's how he makes his living. Every time
5 he'd come back, he would be subjected to secondary questioning
6 at the border.

7 Meanwhile, starting in perhaps 2013, something like
8 that, his checking accounts were being closed one after
9 another. A checking account would be closed without
10 explanation by the bank. He would have to find a new bank,
11 open a new checking account. He was sued in New York City for
12 alleged fraud, civil RICO, right in this courthouse by Rio
13 Tinto, a giant mining company. They alleged, falsely, that he
14 had taken a \$200 million bribe in Paris from an Israeli. They
15 alleged that there were ongoing government investigations.

16 He heard about agents of the United States going
17 around the world asking questions about him in Guinea, in
18 Morocco, in Germany, in Switzerland, all over the place asking
19 questions about Mahmoud Thiam. This is during the period
20 roughly 2013 to the present, to December 13, when he was
21 arrested. There were newspaper articles, indictments coming in
22 the Ghanaian mining scandal. We attached one of them to the
23 memorandum. So the ominous warning signs were unmistakable,
24 unmistakable.

25 And here he is. I don't know how many times he

1 traveled internationally between 2011 and his arrest. I have
2 represented him from 2014, and he was on the road a tremendous
3 amount, always coming back to the United States, always
4 traveling in his own name, always traveling on a U.S. passport
5 with one or two exceptions that we referenced in our brief
6 having to do with some very special visa situations. Always
7 coming back.

8 On December 13, as I say, he was arrested. He was
9 interviewed by pretrial services. They recommended his release
10 on very standard conditions. In a very brief hearing before
11 Magistrate Judge Francis, the government said, repeated, that
12 Mr. Thiam had lied to pretrial services. We have quoted some
13 of the language that the government used before Magistrate
14 Judge Francis.

15 They said, for example, "I learned from the agent that
16 the defendant controls bank accounts, at least one bank account
17 in Capital One Bank, also not reported in the pretrial services
18 report, and has received hundreds of thousands of dollars in
19 that bank account within the last year or so from an entity
20 known as Extractor Mining, also not reported in the pretrial
21 services report."

22 First of all, as the government has now conceded, that
23 was a mistake, but a tremendously prejudicial mistake. That's
24 number one. Number two, Mr. Thiam had told pretrial services
25 candidly that he generated annually in excess of a million

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1 The government has not shown a thing suggesting that that is a
2 lie. It wasn't a lie. It was made to look like a lie, but it
3 wasn't a lie.

4 The government has all his records. On the day of his
5 arrest, December 13th, they did a very broad search and
6 seizure. They had all his records, his laptop, his electronic
7 stuff, his paper records, everything for about five or six
8 weeks. This lengthy brief they filed on Friday should reflect
9 all the information. He's been sitting in MDC Brooklyn. I've
10 been trying to work with him down there, without records,
11 without papers, using his memory, which thank goodness is
12 usually pretty good. They have had all his records.

13 I want to begin in terms of looking at what they
14 allege in the big brief they filed on Friday. I want to begin
15 with the house in Dutchess County. That did not come up in the
16 hearing before Magistrate Judge Francis. But in the
17 discussions we had with the government almost immediately after
18 what I thought was a shocking pretrial detention order, it came
19 up.

20 They said he's the real owner of this huge thing up in
21 Dutchess County, this huge estate, and he hid that from
22 pretrial services. Now they have had the chance to prove it.
23 They say at page 6 of their memorandum, Judge, property and
24 other records show that Thiam is the true owner of the Dutchess
25 County estate. That's their position. They say property and

1 other records are going to demonstrate.

2 Let me give you a few words of background on the
3 Dutchess County estate, and then I want to look with you, your
4 Honor, at the records that they contend show that he is the
5 true owner. In the spring of 2010 he was still the mining
6 minister of Guinea. He was living in Guinea. Part of the deal
7 was he got to be with his family from time to time in New York.
8 That summer, the summer of 2010, he spent some time in New York
9 with his family.

10 In the spring of that year 2010, he and an old
11 business partner and then friend, a man named Aquil Rajahussen.
12 He's a Mozambican. Mahmoud and Aquil started to talk about
13 possibly acquiring property in the United States because Aquil
14 was very interested. Property values had sunk in the 2008-2009
15 period and Aquil wanted to invest. And Mahmoud had a kind of a
16 self-interest in this because he and Fatim had rented property
17 up in Dutchess County, they loved it.

18 So he and Aquil made an informal deal, which was
19 Aquil, you buy it, we'll use it, "we" meaning Mahmoud and Fatim
20 will use it, we'll put some money into renovation, you will own
21 it, it will appreciate, everybody will be happy. Aquil hardly
22 ever came to the United States, if at all. So they had this
23 kind of informal agreement.

24 You will be hearing more about Aquil in a few moments
25 in another context. They had many ongoing business

1 transactions. Money went back and forth between them in all
2 kinds of ways. At one point Mr. Thiam had made a \$50,000
3 charitable contribution to something in the name of Aquil's
4 father. They had known each other and they were business
5 partners and acquaintances.

6 That summer of 2010 Mahmoud and Fatim house-hunted in
7 Dutchess County. We filed additional exhibits today, and I
8 apologize for the lateness, your Honor, but we were responding
9 to what we saw in the Friday submission from the government.
10 There is a power of attorney, Exhibit No. 12 in our
11 supplemental declaration. SSN -- which stands for Sociedade
12 Saboeira de Nacala, which is Aquil's Mozambican company -- gave
13 a power of attorney, first to Mahmoud and to Fatim, to
14 essentially negotiate and house hunt for SSN. Ultimately, when
15 they had found the house that they thought was a great buy on
16 Duell Road, SSN gave Fatim a power of attorney.

17 Turning now to the government's exhibits. Exhibit B
18 is the transfer from someone named Bell James Ford, the owner
19 of Duell Road, the original owner, to SSN, Aquil's company.
20 Fatim signs somewhere in this document. Actually, maybe she
21 doesn't have a signature on this one. Anyway, B is the
22 original transfer from Bell James Ford to SSN.

23 Then C is another of the transaction documents in that
24 original transfer, and this one is indeed signed by Fatim Thiam
25 on behalf of SSN because she was the attorney-in-fact. She had

1 a power of attorney to do exactly this.

2 The deal was that Mahmoud and Fatim were going to
3 assist with finding a house, purchasing a house for SSN, use
4 the house. The original deal was paying rent and renovating.
5 What happened was that the cost of renovation -- I've owned an
6 old house -- the cost of renovation soared and sort of overtook
7 the obligation to pay rent at some point. But that was the
8 deal. Mahmoud and Fatim started very openly using the Duell
9 Road house in Dutchess County

10 As I say, the government has staked out a position
11 that these are the true owners. One of the smoking guns in
12 their view is Exhibit D. In fact, what they say on page 12 of
13 the memorandum about Exhibit D is, "Thiam listed himself as
14 owner of record in a building permit application for this
15 property." That sounds pretty compelling.

16 When you turn to Exhibit D, you discover that it is an
17 application for a building permit filed by a contractor who
18 can't spell Mahmoud and Fatim Thiam. He lists next to names of
19 owners of record, he lists Mahmand and Fatiam Thiam. This is a
20 contractor.

21 The application for building permit has some technical
22 stuff about what he is going to do for the renovation and all
23 of that. It is a contractor responding to his client who has
24 ordered renovations. And when he, the contractor, is asked who
25 owns this thing, he says, well, I don't know, Mahmand and

1 Fatiam. This is their proof of true ownership.

2 Then they go on and they attach documents at E and F
3 in which Mahmoud and Fatim created a company called 771 Duell
4 Road LLC, as if this is some kind of damning proof of true
5 ownership. They had expenses. They were renovating. They had
6 a caretaker. They wanted to segregate their expenses. And in
7 their own name without the slightest deception or anything else
8 they started an LLC. It proves nothing about home ownership.

9 Then we move on to Exhibit G. This will take a little
10 bit more background. Have to introduce a new person into the
11 story. There is a man named Mohamed Alabbar. In certain parts
12 of the world he is quite famous and well known. He is from the
13 United Arab Emirates. He is a billionaire. If you Google him,
14 a huge amount of stuff comes up about him.

15 In 2010 he came to Guinea. Remember, Mahmoud is still
16 the mining minister in 2010. In 2010 he came to Guinea with
17 big ideas about mining and about acquiring interests and that
18 sort of thing. He and Mahmoud and Aquil, the man of SSN, came
19 to know each other.

20 At some point Aquil of SSN, who was the owner of Duell
21 Road -- and there is really absolutely no question, from what
22 we have looked at, that SSN was the owner of Duell Road. At
23 some point apparently he was. Aquil had a concern that Duell
24 Road could be taken from him in a completely unrelated
25 arbitration. It has nothing to do with Mahmoud. It has

1 nothing to do with anybody. But that was apparently his
2 concern. He wanted to transfer the house to Alabbar. And he
3 did.

4 Exhibit G is the transfer from SSN, Aquil's company,
5 to Amer Holdings PTE Limited, a Singapore company. The
6 significance of the name Amer Holdings PTE, I will return to
7 that in a moment. But for the moment let me just say that the
8 government also makes a lot of the second page of Exhibit G.
9 Exhibit G, as I say, the first page is called Dutchess County
10 Clerk recording page, and it is the transfer from SSN of the
11 Duell Road property to Amer Holdings PTE Limited.

12 On the second page, which is the bargain and sale deed
13 that goes along with it, Fatim signs for SSN, as she always
14 has, through the power of attorney. Nothing exceptional or
15 unusual about that. What the government refers to repeatedly
16 in their memorandum is that somebody has written beneath her
17 name, where she signed Fatim Thiam, "member." In other words,
18 she is signing for SSN and someone has written "member" below
19 her name.

20 We don't know who wrote "member." I have spoken to
21 the lawyer who represented the Thiams in this closing, or I
22 should say Fatim and SSN in the closing. He identified some of
23 the handwriting on the document as his. Some of the
24 handwriting was put because the title company insisted upon it.
25 He has a footnote here, "This conveyance has been made with

1 unanimous consent," etc. He said, the title company asked me
2 to do that, and put that there. He said, who knows who wrote
3 "member." It's not Fatim. Fatim has said it is not her
4 handwriting. Maybe it's somebody at the title company. Maybe
5 it's a paralegal in Mr. McGregor's office, the lawyer's office.
6 He has absolutely no recollection.

7 They suggest in their memorandum that that single word
8 "member" is the Rosetta Stone or the Rosebud -- that's the
9 metaphor I'm looking for, it's the Rosebud -- that unlocks the
10 key, that explains everything. It just doesn't look work that
11 way. There is absolutely no indication that Mahmoud or Fatim
12 had any interest at all, any equity interest at all in SSN,
13 which owned the house.

14 The government, however, has a couple of more points
15 to make about the ownership. First the down payment. The down
16 payment is back in 2010. It's part of the indictment. It was
17 part of the complaint and it is part of the indictment. They
18 say it's illegal use of bribe proceeds. It's really one of the
19 hearts of their money laundering case.

20 At page 6 of their memorandum that we are looking at
21 today, they say, "In particular, in November 2010 Thiam agreed
22 with an associate," and I think they are referring to Aquil of
23 SSN, that Thiam would wire a \$375,000 down payment to a company
24 in Malaysia controlled by the associate in exchange for a wire
25 transfer in the same amount from a company in Mozambique, "the

1 Mozambique company," and I think they are referring to SSN, to
2 the lawyer for the buyer of the Dutchess County estate.

3 In other words, what they are saying is Thiam would
4 send \$375,000 to this Malaysia company that was controlled,
5 they said, by Aquil of SSN, and then Aquil of SSN would wire
6 transfer \$375,000 to the seller.

7 As I said earlier, Judge, at that time there were a
8 lot of financial transactions between Mahmoud and Aquil.
9 Sitting at the MDC Brooklyn without the benefit of any records
10 or any refreshing of recollection or any context, he has,
11 frankly, no recollection of the 375,000 transfer. He is not
12 disputing that it happened. He has no recollection of why it
13 happened.

14 Note here what the government is saying. The
15 government is saying that SSN controlled this company in
16 Malaysia. The company that they are referring to is a huge
17 company in Malaysia, Pacific Inter-Link. The notion that Aquil
18 controlled Pacific Inter-Link, which the government says a
19 couple of times in its memorandum, I would love to see their
20 proof that Aquil Rajahussen controlled Pacific Inter-Link.
21 What they are saying is that Mahmoud paid \$375,000 to Pacific
22 Inter-Link at the request of Aquil and then Aquil of SSN wire
23 transferred \$375,000 to the seller of the property.

24 As I say, Mahmoud, sitting at MDC Brooklyn, can't put
25 it in context. But assume that everything they said was

1 correct, putting aside this notion that somehow Aquil
2 controlled this huge company Pacific Inter-Link. They suggest,
3 by the way, that Pacific Inter-Link, at page 5, facilitated and
4 concealed the purchase of the Dutchess County estate. As far
5 as I can tell, it is a wild allegation.

6 But for purposes of this argument let's assume that
7 indeed Aquil asked Mahmoud to wire transfer \$375,000 to Pacific
8 Inter-Link and then SSN wire transferred \$375,000. That's sort
9 of for the trial. It's part of the indictment, it's for the
10 trial.

11 But the government says the property is worth, I think
12 they said \$3,750,000. This was \$375,000. They have never
13 shown another dollar, even if you give them every benefit of
14 the doubt in the world, that somehow Mahmoud was paying the
15 down payment, they have never shown another dollar other than
16 renovation. They have never shown another dollar that went
17 toward the purchase of the house. How they put the house in
18 his name is still utterly beyond me.

19 The reason this is so significant, Judge, is that, as
20 you have seen in their brief, it is one of the central pieces
21 of this brief that this man is concealing his ownership for
22 some nefarious purpose, maybe because they think he can
23 liquidate the house somehow and flee. Who knows. Or it is
24 just part of the general presentation that he is a liar and
25 that he lied to pretrial services. It's not true. He is not a

1 liar and he didn't lie to pretrial services.

2 I need to deal with one further very important
3 mistaken allegation that they make?

4 THE COURT: Mr. Solomon, I would ask you to start
5 summing up because I have another conference coming up.

6 MR. SUMMIT: Judge, this is hard.

7 THE COURT: I understand. But we cannot be here all
8 afternoon. I never understood it would go this long.

9 MR. SUMMIT: Judge, I'm sorry, but there is a lot of
10 factual error in this thing that I haven't even touched.

11 THE COURT: I am not going to allow you the balance of
12 the afternoon. I have another conference coming up.

13 MR. SUMMIT: Can we resume perhaps tomorrow or
14 something?

15 THE COURT: I also have to hear from the government.

16 MR. SUMMIT: I must get this information to you.

17 THE COURT: I have the written records. Sum up what
18 you think are the key points.

19 MR. SUMMIT: Well, all right.

20 They repeatedly that he got money from the company
21 Amer Holding PTE Limited, the company to which SSN transferred
22 the house. They are utterly mistaken. They are confusing two
23 entities. The tax return that he filed -- with the help, by
24 the way, of the one of the leading tax preparers in the United
25 States, Caplin & Drysdale, and CBIZ, the accountants.

1 In 2010 he disclosed a 25 percent interest in a
2 company called Africa Middle East Resources in Dubai. That
3 company has paid him money. The government has utterly
4 confused Amer PTE Holding, which received the house from SSN,
5 from which he has never gotten a dime, and African Middle East
6 Resources from Dubai, which has paid him, for very legitimate
7 reasons. So the Dutchess County thing absolutely falls apart,
8 your Honor, it absolutely falls apart.

9 Now I will move as quickly as I can, but there is a
10 tremendous amount here.

11 They accuse him of lying to the IRS because in those
12 2009 and 2010 tax returns -- which were reviewed by some of the
13 leading tax preparers in the United States. Kaplan & Drysdale
14 has great tax lawyers and so does CBIZ have great accountants.
15 He described himself as a private banker. The profession is
16 called private banker. Elsewhere he lists the income he had
17 from Guinea as minister of mines. The government says he was
18 lying to the IRS.

19 We have talked to the CBIZ accountants. They said
20 this is a software issue, it happens all the time. Lawyers
21 retire and ten years later the tax return still says lawyer.
22 The CBIZ guy said look, we are numbers people, we don't worry
23 too much about this stuff. Software kind of puts it forward.
24 In any event, his minister of mining was disclosed as well as
25 the income from Hong Kong was disclosed.

1 Now we have to address the mining companies, which are
2 the other centerpiece of their presentation. In the interests
3 of time, I will say this. In 2010 Mahmoud, Aquil Rajahussen,
4 whom you have been introduced to, and Mohamed Alabbar the
5 extraordinary wealthy guy from UA, they began talking about
6 mining, setting up mining companies, getting mining permits,
7 etc. First it was just Mahmoud and Aquil, and then Alabbar
8 came in.

9 As Mahmoud said to me the other day in prison, it was
10 a dream that we had, it was a wonderful dream that we had in
11 2010, and it didn't work. It didn't materialize. In the
12 documents we presented you with today, we have the Amer,
13 African Middle East Resources Dubai Company which become the
14 sort of funder of these mining companies. They put a lot of
15 money into the mining companies, Amer did. Nothing worked.
16 Ebola came along in 2014. Every skilled mining engineer fled
17 the country.

18 I spoke today to John Myles, who is negotiating with
19 Amer. He is a lawyer in Kenya. He is negotiating with Amer,
20 African Middle East Resources, the Dubai company, about the
21 wind-down of that company. Alabbar has completely lost
22 interest. He says he is \$60 million in debt. There are no
23 buyers for the properties. He's not putting in another dollar.
24 In the exhibits that we handed up, your Honor, you will find
25 his African Middle East Resources notice to stockholders of

1 liquidation. They are liquidating.

2 We have said from the start of this proceeding that
3 these companies are valueless. He wasn't hiding an asset.
4 When he had his brief interview with pretrial services, he
5 wasn't hiding an asset. He disclosed his interest in those
6 companies in that 2010 tax return. He has been completely open
7 and aboveboard about the mining companies. They are just
8 worthless.

9 If the government wants to give him a document that
10 says he divests all interests in the underlying mining
11 companies in African Middle East Resources, in Al Mora, which
12 is another company involved, he will do it. He has no
13 interest. This is no asset.

14 I had better move quickly to the passport issue and
15 the citizenship issue. He is a citizen of three countries.

16 Guinea, which he absolutely cannot step foot in. He
17 hasn't been back there since 2010. The present government is
18 extraordinarily hostile to him. If he was merely arrested and
19 imprisoned for the rest of his life, he would be lucky, if he
20 ever set foot in Guinea again. So the Guinean passport is
21 irrelevant. I don't think the government contests that.

22 They make a big deal that he is a French citizen as
23 well. He became a French citizen through his marriage to Fatim
24 sometime in the early 2000s. They say France doesn't extradite
25 its own citizens. Number one, Mr. Thiam will make any

1 statement under oath on the record that he would not assert any
2 extradition privilege if he ever found himself in France, which
3 he is not going to, still facing these charges in the United
4 States. So he will give any statement, knowing intention
5 waiver of the right to be extradited from France.

6 If that is not enough, and I say this with some
7 reluctance, but if that is not enough, he would renounce his
8 French citizenship. France, so far as we can gather, if you
9 have alternate citizenship, like United States citizenship, and
10 you don't have deep roots in France, they will let you renounce
11 your French citizenship. I say reluctantly because he values
12 his French citizenship. He values citizenship given his
13 chaotic stateless childhood. But he's got to get out. He's
14 got to prepare his defense.

15 That brings me to perhaps the final point I want to
16 make quickly. The children are in good private schools here in
17 New York. They are constantly on the verge of being thrown out
18 now. He is deep in default on tuition. The irony of this
19 whole situation that the government contends, without facts,
20 that he's got hidden resources somewhere. Meanwhile his
21 children are on the verge of being thrown out of Dalton and
22 Horace Mann.

23 We handed up in the most recent exhibits the eviction
24 proceedings from their apartment in New York. He owns an
25 apartment in New York, but it is liened up to the hilt by the

1 IRS. He owes 8 or \$9 million to the IRS.

2 So the children are facing being thrown out of school,
3 the family is facing eviction from their house, and he can't
4 earn a dime. There are business deals that he has in an
5 ongoing fashion that he can't follow through on from MDC
6 Brooklyn that would enable him perhaps to pay off some of these
7 bills, to protect his family, to raise a legal defense fund I
8 might add, and to defend himself.

9 This is a complex white-collar crime case. Having
10 visited him for a month now in MDC Brooklyn and having tried to
11 work with him on these issues, the handicap is enormous. And
12 there is no basis, Judge. I would like to say he is like any
13 other white collar defendant who gets bailed. In some ways it
14 is more extreme than that. There is no basis to distinguish
15 it. People like Bernie Madoff have been bailed, for goodness'
16 sake.

17 In all those years, I will challenge the government
18 right now to articulate a single thing that he ever did in all
19 these years when the government was after him, when all of
20 these warning signs and storm signals were building, I would
21 like to hear one thing that he did in preparation for flight.

22 They say there are government officials who would give
23 him false travel documents. They say so in their memorandum.
24 I would like them to name those government officials today and
25 say the basis on which they believe that those government

1 officials are prepared to give him false travel documents and
2 what he did to encourage that. I would like to hear that.

3 This is an extreme case, your Honor, an extreme case.
4 It really is time for his release under appropriate conditions.
5 They had a double burden here. Flight risk, first they had to
6 prove flight risk. Then they had to prove that there is no set
7 of conditions under which we could be assured of his staying.
8 They haven't met either burden, not remotely close. The thing
9 is a terrible miscarriage.

10 I'll sit down. I had a lot of other things to say.
11 I'll sit down. Maybe I can supplement.

12 THE COURT: Mr. Kobre.

13 MR. KOBRE: Yes, your Honor, I will try to be as brief
14 as possible. The government has shown well beyond the
15 preponderance of the evidence that there are no conditions such
16 that the government can reasonably be assured that Mr. Thiam
17 will appear in court.

18 Judge Francis, in detaining the defendant on the day
19 of his arrest, ruled so because he found it highly improbable,
20 if not impossible, that an individual with these kinds of
21 resources, reported resources, resources that are documented,
22 at the same time reports that he has no assets whatsoever here
23 in the United States or abroad. That is exactly what Judge
24 Francis said when he said that he would not release the
25 defendant until there has been a forensic analysis of where the

money is. That's a quote from Judge Francis.

Why did he so find? Very briefly, your Honor, let me give a little bit of background about the offense. I know your Honor has read the brief, so I'm not going to go into any kind of detail.

The defendant, while he was minister of mines in Guinea from 2009 to 2010, received bribes from a Chinese conglomerate in exchange for promoting a deal that basically awarded the Chinese conglomerate nearly total control of Guinea's mining sector. In order to receive that bribe, the defendant repeatedly engaged in lies and concealment to hide the money, to hide the bribe.

Then, to be able to bring the bribe proceeds into the United States, first he lied in connection with opening up the bank account in Hong Kong, where he failed to report that he was at the time a public official in Guinea. He used a French passport rather than his valid Guinean diplomatic passport or his U.S. passport. Within weeks of this deal being awarded to the Chinese conglomerate, \$3 million was wired into that account, 3 million United States dollars into that account by one of the senior executives in the Chinese conglomerate.

Now Thiam needed to get the money into the United States. So he started wiring money into his JPMorgan Chase agent account here in the United States. That, together with other unusual wire transactions, led JPMorgan to start a

1 compliance inquiry. When they did so, they interviewed Mr.
2 Thiam. He asked him where these wires were coming from. He
3 said they were coming from this person who he identified as a
4 business partner and that business partner was associated with
5 the Chinese conglomerate.

6 He had an email correspondence, which is recited in
7 the complaint, with that business partner in which he basically
8 ran past the business partner what he was going to tell the
9 bank. The business partner responded, looks good. In other
10 words, looks good if you tell the bank this. As long as they
11 don't dig too deep, we can justify with real transactions.
12 Clearly Thiam was hiding from the bank what had occurred, that
13 these were proceeds of bribes.

14 Shortly thereafter, JPMorgan closed his account. He
15 then went to another bank, HSBC in New York, opened up a new
16 bank account. When he did that, they asked him what his
17 employment was. At that time he was still minister of mines,
18 did not so report; rather, reported that he ran some other
19 private company, also untrue. Didn't report that.

20 Later on that bank as well did a compliance inquiry.
21 They also asked what was the source of the money from the Hong
22 Kong bank account where he received the bribe proceeds, and he
23 told them it was from, amongst other things, the sale of land
24 in Africa. Again a total lie. Lie after lie, concealment
25 after concealment in connection with the underlying money

1 laundering offense to bring the money here in the United
2 States.

3 The real issue that was before Magistrate Judge
4 Francis and why I think Judge Francis detained the defendant
5 was that he simply did not find the defendant credible when he
6 said he doesn't have any foreign or domestic assets. I want to
7 briefly touch on that.

8 Defendant reported to pretrial that he earns about
9 \$1.2 million a year, that he pays rent of \$24,000 a month, and
10 that he has tens of thousands of dollars yearly in private
11 school tuition for his children per year.

12 The government recently obtained from one of those
13 private schools, which I have handed up to the Court and I have
14 handed to defense counsel, a wire transfer from a foreign bank
15 account -- and I'll come to that very shortly -- from a bank
16 account controlled by the defendant in Dubai to the school in
17 the amount of \$18,000. What was the date of this wire? Not a
18 few months ago, your Honor, but on November 28, 2016, just
19 about two weeks before the defendant was arrested. That's a
20 wire transfer from one of these Dubai's bank accounts to the
21 school.

22 What do we have? A \$1.2 million yearly income. The
23 defendant admits that he owns a \$1½ million apartment. We have
24 the \$3½ million Dutchess County estate, which I'm not going to
25 get into right now just because of limited time. I think the

1 documents that the government has submitted are quite
2 sufficient to show that Thiam is truly the beneficial owner of
3 that property.

4 In addition, the government has submitted records
5 showing the defendant owns a 50 percent interest in Amara
6 Group. All we have seen in the defendant's brief until now is
7 that he, the defendant, doesn't regard those companies as
8 having value. But they were awarded while Thiam was minister
9 of mines. He awarded to those companies which he himself had
10 an interest in mining licenses, which have a value to them.

11 The government has learned from a source within the
12 Guinean government that in fact mining operations were carried
13 out by those companies or by at least some of those companies
14 between 2010 and 2015, which is consistent, quite frankly, with
15 money that the defendant received from Amara Group, and that is
16 described in our brief, over \$300,000, although that was back
17 in 2011.

18 If you want to come more recently, your Honor, the
19 government discovered during the search, and these are exhibits
20 to the government's brief, in November of 2015 two Dubai bank
21 accounts, one in the name of Extractor Mining and another one
22 in the name of Thiam Limited. I don't have the precise name in
23 front of me right now.

24 There are two bank accounts based in Dubai which each
25 had as of November 2015, so a little more than a year before

1 the defendant was arrested, a little bit over 2 million United
2 Arab Emirates dollars, which is equivalent -- the total balance
3 of those two bank accounts being over a million dollars.

4 In addition, the defendant has admitted in the past,
5 in particularly to the compliance officer who did the
6 compliance inquiry by JPMorgan, that he had at the time
7 numerous business dealings and including bank accounts in
8 Luxembourg, Switzerland, and in Hong Kong as well. The
9 government has also submitted records showing that the
10 defendant at least as of 2011 had bank accounts in Bahrain.

11 Coming back to the more recent banking records -- I
12 don't have much more, your Honor -- the government has handed
13 up to the Court and also to defense counsel wire transfer
14 records by the construction company that did work on the
15 Dutchess County estate. Numerous wires from various foreign
16 bank accounts, including those that Thiam controls in Dubai,
17 but other bank accounts.

18 For example, your Honor, in January 2016 a wire for
19 \$50,000 from Extractor Mining Limited in Dubai to the
20 contractor for work on the house. That's a United Arab
21 Emirates bank. But in March of 2016, less than a year ago, a
22 wire from a company called Blue Water International on March
23 21, 2016, to Sgarbossa Construction, the construction company
24 that Thiam engaged to do work on the Dutchess County estate
25 that he now claims he's just a tenant of, in essence, for

1 \$29,975.

2 The wires go on and on. There is even a larger wire
3 from a different entity in October of 2015 from an entity at
4 Habib American Bank called Build Tech Construction LLC for
5 \$103,970, on October 20, 2015.

6 Where these bank accounts are, who controls them? We
7 don't have information on that, your Honor. But what doesn't
8 make any sense here and what Judge Francis found is how someone
9 with \$1.2 million yearly income, someone who lives in a \$24,000
10 a month rental apartment, someone who sends their children to
11 private expensive schools, someone who has in the past had
12 multiple foreign bank accounts, including not all that long
13 ago, someone who owns 12 mining companies and multiple mining
14 ventures, someone who can apparently afford to pay hundreds of
15 thousands of dollars in the not too distant past for
16 construction on a \$3.75 million estate has zero assets right
17 now, your Honor. It just defies logic. It defies belief.

18 Taking that, your Honor, together with the defendant's
19 extensive history of concealing money, of lying to banks, taken
20 together, quite frankly, with his French citizenship and with
21 his contacts abroad -- your Honor, when we talk about travel
22 abroad, the defendant has done extensive travel, including to
23 places where the government would have little or no recourse to
24 bring him back here, including to France, including to Hong
25 Kong, including to the United Arab Emirates and traveling, as

1 your Honor has seen in the exhibits, traveling in fair style,
2 staying in thousand-dollar-a-night hotels.

3 Your Honor, there are strong reasons to believe here
4 that the defendant has concealed, is concealing, his assets, is
5 a substantial risk of flight, and that he needs to be detained.
6 The government asks that the Court affirm Judge Francis's order
7 detaining the defendant.

8 THE COURT: We have run out of time. I am going to
9 adjourn the hearing until an available meeting time tomorrow.
10 Mr. Summit, what might be convenient to you in the morning or
11 afternoon?

12 MR. SUMMIT: The afternoon would be preferable, your
13 Honor.

14 THE COURT: Mr. Kobre?

15 MR. KOBRE: The afternoon is fine, your Honor. I will
16 make every effort to deal with the United States Marshals. At
17 this time it might be difficult. If I can tell the marshals
18 that your Honor has scheduled the hearing for tomorrow
19 afternoon, I assume that will be sufficient to make sure we can
20 get the defendant back here.

21 THE COURT: All right. 2 o'clock, is that suitable?

22 MR. SUMMIT: That's perfect.

23 MR. KOBRE: Yes, your Honor.

24 THE COURT: Thank you.

25 (Adjourned to 2:p.m., December 31, 2017)